

REMARKS

This paper is submitted in reply to the Official Action dated November 4, 2005 and in follow-up to the above-described interview held with the Examiner on January 30, 2006.

Applicant has amended independent claim 1 to delete reference to the previously objected to mortarboard material thickness dimension "w". Claim 1 now simply characterizes the degree or extent of material removal in the dished-out area by: "wherein the dished-out holding surface area has a lowermost portion that has a maximum depth of less than about 3 inches".

The dished-out or recessed region of the mortarboard is clearly shown in cross-section in Figures 2, 3, 6, and 7. Claim 1 is now clear in describing the depth of such recessed or dished-out region, in a manner that is clearly understood by those skilled in the art.

Accordingly, applicant believes that the Examiner's previous concern and rejection of claim 1 under 35 U.S.C. §112 is now fully addressed, and requests acknowledgement of same by the Examiner and withdrawal of any continued rejection of claim 1 under 35 U.S.C. §112.

The Examiner had rejected claims 1-28 under 35 U.S.C. §103(a) as being unpatentable over the Hobel (2004/0150236 A1) publication. In particular, the Examiner had recited the Fig. 1c drawing of Hobel as showing "a substantially flat piece of material defining a holding surface area (1) being continuously contoured in a dished-out manner to facilitate the retention and carrying of mortar". As explained in the January 30 interview, and as further described below, the Hobel reference, and in particular Fig. 1c of the Hobel reference does not disclose or have any teachings regarding an upper continuously contoured or dished-out surface for holding mortar or cementitious product. Fig. 1c of Hobel has some similarity to applicant's Fig. 1, but that is where the similarity ends. Fig. 1c of Hobel does not describe the "upper holding surface area" recited by applicant's claim 1. Fig. 1c is a "front view of the underside not the "top" surface of the Hobel hawk (see Paragraph 0031 of Hobel). In contrast, the "upper" surface of the Hobel hawk is shown in Figs. 1a and 1b by the reference "1". There is no teaching or disclosure in Hobel that the upper surface (1) would be anything but flat or planar. The circular portions depicted in Fig. 1c of Hobel represent a plurality of concentric grip grooves and ridges (see Paragraph 0042). The cooperating ribs and grooves on the underside or bottom of the hawk

provide gripping projections for the user and "serve for securing the hawk by means of the fingers" of the user (Paragraph 0042). The only "curvature" referred to in the Hobel patent is disclosed at (10) in Fig. 1d, which again is on the underside of the hawk and forms a handle or gripping surface for the user's hand for supporting the hawk during use.

In contrast, applicant's claim 1 calls for a mortarboard having an upper holding surface that is "continuously contoured in dished-out manner to facilitate the retention and carrying of mortar". Neither Hobel nor any of the other references of record have any disclosures or teachings of such a mortar-carrying and retention upper surface. Accordingly, applicant submits that claim 1 is neither disclosed nor rendered obvious by any of the teachings of any of the art of record, and respectfully requests allowance thereof.

Claims 2-18, which depend from claim 1 and necessarily include the limitations thereof are also believed to be in condition for allowance, for those reasons cited above with respect to claim 1

The Examiner had questioned in the January 30 interview the meaning of the "cut-out" language which appears in claims 3, 9, and 19. The "cut-out" portion (14) is described on page 6, lines 15-20 of applicant's specification and is shown on Figures 1 and 5 at (14) and (14') respectively. The cut-out handle portion (14') of Fig. 5 is described on page 9, lines 13-15. Further description of the cut-out handle configuration is provided on page 8, lines 27-30.

In paragraph 12 of the Official Action, the Examiner has rejected claim 19, in part on the basis that the Hobel reference discloses a cut-out area portion that forms the handle (Fig. 3a) of Hobel. The finger grip handle shown in Fig. 3a of Hobel does not define a "cut-out area portion configured to form a carrying handle" which is in a "generally flat piece of material" which defines a holding surface area for the mortar. Rather, the handle portion of the Hobel reference is formed below the upper surface holding area of the Hobel hawk in a piece of material that actually extends below and is generally perpendicular to the upper surface area. Applicant's claim 19 requires the cut-out portion which forms the carrying handle to be in the generally flat piece of material that also defines the upper holding surface area of the mortarboard. This configuration is not shown in Hobel or any of the other references of record. This unique feature of applicant's invention allows a person to simultaneously grasp a number of the mortarboards in

one hand for carrying them from one location to another. The handle configurations of prior art hawks such as that of Hobel and others shown by the prior art, and the fact that most prior art hawk or mortarboard configurations are not mateably stackable, does not allow an operator to readily grasp and move a plurality of the hawks at one time. These and other features of applicant's invention are described in more detail in applicant's website describing the product at (<http://www.gatorback.net/>).

For the above reasons, applicant submits that the structure recited in claim 19 is neither disclosed nor rendered obvious by any teachings of the Hobel reference or any of the other art of record, and respectfully requests allowance thereof.

Claims 20-28 which depend from independent claim 19, and which necessarily include the limitations thereof, are also deemed to be in proper form for allowance for those reasons recited above.

The Examiner has also taken the position that the Hobel reference discloses a structure that enables nesting or stacking of a plurality of the hawk members, and refers to Fig. 5 of Hobel. The hawk structure of Hobel is not in fact stackable or nestable with other such hawk members. The depiction of Fig. 5 of Hobel refers to a container for holding a plurality of the "tear-off blocks" for a hawk (Paragraph 0046). Such tear-off blocks (13) are not a structural part of the hawk as depicted in Figures 1 or 2, but rather are the attachable covers that can be attached to the hawk surface and later peeled off for disposal after use (as discussed in Paragraph 0039 of Hobel). The so-called "tear-off blocks" (13) shown in Fig. 5 would be similar to sheets of sandpaper stacked upon one another and placed within the bottom of a container for subsequent use with a sanding block. In Fig. 5, the hawk itself (a single hawk) is illustrated as flipped over and on top of the stack of tear-off blocks. Fig. 5 does not illustrate a plurality of nested or stacked hawks, but only a "single" hawk. All of the hawk configurations illustrated in Figs. 1, 2 and 3 of Hobel show some type of a protruding handle structure (3) projecting from the bottom surface of the hawk. If one were to attempt to stack two or more such hawks upon each other, the projecting handle would get in the way of any mating nesting configuration for the hawk, which is the subject matter of applicant's claims 18 and 28. The disclosed handles of Hobel

would "prevent" and not assist in any attempt at nesting multiple hawks as disclosed in Hobel, to one another.

For the above reasons, applicant submits that all of the claims remaining in the application are now in proper form for allowance, and respectfully requests reconsideration and allowance thereof.

Applicant has made a significant contribution to the art of mortarboard construction, which provides masons and cement contractors with an improved tool in an age-old industry that has not changed significantly over the centuries. Applicant submits that his contribution to the art should not be diminished by hindsight arguments that cannot be supported by the prior art, and respectfully requests forthwith allowance of all of the claims remaining in the application.

If the Examiner has any questions regarding the claims, the application or the arguments and comments made herein, she is respectfully requested to telephone applicant's undersigned attorney Charles C. Golla at 612-336-4786 to discuss any issues, questions or concerns she may have.

Respectfully submitted,

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Date: February 3, 2006


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